

**United States Department of Labor
Employees' Compensation Appeals Board**

R.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Englishtown, NJ, Employer**

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**Docket No. 15-0699
Issued: July 27, 2015**

Appearances:

Jason S. Lomax, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 2, 2015 appellant, through counsel, filed a timely appeal from the August 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from August 5, 2014, the date of OWCP's last decision was February 1, 2015, a Sunday, consequently, the period for filing the appeal ran to the next business day, Monday, February 2, 2015. Since using February 6, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 2, 2015, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f).

ISSUE

The issue is whether appellant met her burden of proof to establish that the May 24, 2011 work injury accelerated or contributed to her preexisting chondromalacia.

FACTUAL HISTORY

On May 24, 2011 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim alleging that she was injured at work on that date when her feet got stuck between two skids causing her to lose her balance and fall into a split position.

In a May 24, 2011 emergency room report, Dr. Tracey Lee, Board-certified in emergency medicine, diagnosed a muscle strain. In a June 22, 2011 report, Dr. Jason Wong, a Board-certified osteopath specializing in sports medicine, noted the work incident and advised that appellant fell in some sort of split position that did not result in direct trauma on the knee, but pulled and twisted it. He diagnosed a torn medial meniscus of the left knee. On August 12, 2011 Dr. Wong advised that a magnetic resonance imaging (MRI) scan confirmed a medial meniscus tear of the left knee and indicated possible grade III chondromalacia.

Initially OWCP denied the claim but, upon reconsideration, it accepted the claim for left knee tear of the medial meniscus. On March 12, 2012 appellant underwent a left knee arthroscopy authorized by OWCP. She stopped work and received appropriate wage-loss compensation.

In a March 12, 2012 operative report, Dr. Wong noted performing the left knee medial meniscectomy, excision of the ligamentum and plica, excision of two bone spurs, and chondroplasty of the trochlear groove. Dr. Wong stated that appellant had grade III, near grade IV chondromalacia of the trochlear groove. He prescribed physical therapy and continued noting appellant's postoperative status.

On May 1, 2012 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion regarding appellant's work-related condition and work status. In his May 23, 2012 report, Dr. Lakin noted that appellant's pain had improved following surgery but she was still having difficulty with weakness of the knee. On examination, Dr. Lakin found no effusion, well-healed arthroscopic portals anteroinferiorly and medially, no lateral joint line tenderness, and minimal tenderness over the arthroscopic portal medially. He noted that there was no patellofemoral tenderness, compression, or grind. Dr. Lakin further noted that range of motion was less than three degrees of extension to 120 degrees of flexion. Appellant was able to squat and bend with no significant difficulty. Quad and hamstring strength was 5/5, and the gait was unremarkable. Dr. Lakin stated that appellant had excellent motion and strength of the knee with minimal tenderness over the arthroscopic portal. He opined that appellant was not suffering from any residuals of the work-related injury and that the accepted condition was resolved. Dr. Lakin advised that appellant could perform the duties of her position full time and that she had no other orthopedic conditions that prevented her from working. He stated that appellant did not require any additional medical care for her work-related injury.

In a July 6, 2012 report, Dr. Wong stated that appellant continued to have pain in the medial aspect of her left knee. He diagnosed left knee pain secondary to weakness of the quads and recommended a different physical therapy facility.

On August 21, 2012 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Melvin Vigman, a Board-certified neurologist, for a second opinion to determine whether appellant suffered any neurological deficit related to the work-related condition. In a September 13, 2012 report, Dr. Vigman reiterated the history of appellant's injury and her treatment history. He advised that appellant reported continued left knee pain, particularly when she put weight on it. On examination, appellant had normal strength, coordination, sensation, and reflexes of the lower extremities. Dr. Vigman assessed no neurological disease or damage. He advised that appellant could perform her regular duties from a neurological standpoint and that there was no need for neurological treatment.

In an October 11, 2012 report, Dr. Wong noted that appellant reported anteromedial joint discomfort as well as discomfort over the superolateral aspect of the patella. He noted findings and opined that she had a bit of chondromalacia in the patella. However, Dr. Wong advised that he did not believe chondromalacia to be the cause of appellant's pain. Rather, he attributed it to quad weakness. Dr. Wong noted that he would likely discharge her from his care at her next appointment and that she could return to work at that time. He advised that at the present time appellant should only do sedentary work due to her inability to carry any significant weight. On November 9, 2012 Dr. Wong noted that appellant had continued pain, diagnosed chondromalacia, and advised that she needed further treatment and therapy.

By letter dated November 15, 2012, OWCP sent Dr. Lakin appellant's position description. It requested an addendum report addressing whether appellant would have difficulty performing any aspect of her job. In a November 15, 2012 report, Dr. Lakin advised that he reviewed appellant's job description and concluded that she could return to full-time work. He reiterated the findings from his May 23, 2012 examination and opined that appellant had excellent function of her knees, strength and motion.

By letter dated December 13, 2012, OWCP advised appellant that it proposed to terminate her wage-loss and medical benefits. It advised that the weight of the evidence was represented by Dr. Lakin who found that there were no residuals of her accepted condition and that she was no longer disabled from work.

In a January 4, 2013 report, Dr. Wong advised that appellant continued to have discomfort of her left knee due to incomplete rehabilitation of the quads and chondromalacia of the knee. Examination of the left knee revealed no significant effusion, heat, or warmth. Dr. Wong noted that she could fully extend and flex her knee. He advised that there was some tenderness in the patellofemoral joint medially, no medial joint line tenderness, and anteromedial soreness. Dr. Wong assessed mild chondromalacia of the left knee with some anterior knee pain secondary to quad weakness. He advised that appellant was undergoing injections into her left knee for her chondromalacia.

In a January 11, 2013 report, Dr. Wong advised that appellant was still experiencing pain on the medial side of the knee. He advised that examination revealed no heat, warmth, or any

significant effusion. Dr. Wong assessed chondromalacia of the left knee in the anterior knee as well as irritation of the medial joint space.

By decision dated January 28, 2013, OWCP terminated appellant's wage-loss and medical benefits effective January 28, 2013.

In a January 18, 2013 report, Dr. Wong advised that appellant completed her final injection. However, appellant still complained of pain and discomfort in the left knee. Her biggest complaint was discomfort over the anteromedial joint line, but arthroscopic pictures revealed that it appeared stable and should not cause her any problems. Dr. Wong noted that he would see appellant again in one month and at that time she would be at maximum medical improvement.

By letter dated January 31, 2013, appellant, through counsel, requested an oral telephone hearing.

In a February 12, 2013 addendum report, Dr. Wong reiterated the findings of his earlier reports. He noted that in his initial examination he assessed a torn medial meniscus which he attributed to the work accident and chondromalacia of the trochlear groove. Dr. Wong noted that appellant's chondromalacia may have been present prior to the injury, but he advised that she had no symptoms of pain or discomfort to the anterior aspect of the knee prior to the injury. He opined that the work-related injury caused appellant to have a permanent injury to the medial meniscus of the knee and exacerbated the chondromalacia of the joint and trochlear groove. Dr. Wong further opined that appellant would always have residual pain and discomfort of the medial joint as well as to the patellofemoral joint. He noted that the damage to the cartilage could not be repaired, only mitigated.

In a February 15, 2013 report, Dr. Wong advised that appellant had completed her series of injections and noted that she still had discomfort over the anteromedial joint line. Left knee examination showed a slight valgus deformity, tenderness over the anteromedial joint line, no significant pain over the anterior aspect of the knee, discomfort with crepitance, and no effusion. Appellant could fully extend her knee and flex it without any difficulty. She could fire her right quad a little better than she could on the left. Dr. Wong assessed osteoarthritis of the trochlear groove. He advised that appellant had reached maximum medical improvement.

During the May 17, 2013 hearing, appellant's counsel argued that there was a conflict in the medical evidence regarding the duration and extent of appellant's injuries. He noted that appellant's benefits were terminated on January 28, 2013, but that Dr. Wong found that appellant had not recovered at that time.

By decision dated July 31, 2013, an OWCP hearing representative affirmed the January 28, 2013 termination of appellant's compensation benefits. She found that although Dr. Wong's report was not sufficiently rationalized to establish causal relationship between appellant's preexisting chondromalacia and the work injury, he raised a new issue that required further development of the medical evidence. The hearing representative directed further

development as to whether appellant's preexisting chondromalacia of the trochlear groove was aggravated, exacerbated, or precipitated by the work injury.³

On August 13, 2013 OWCP referred appellant to Dr. Lakin for a second opinion regarding whether appellant's chondromalacia was causally related to the work injury. In his September 9, 2013 report, Dr. Lakin stated that he reexamined appellant on August 28, 2013. He noted that appellant still complained of left knee pain worsened by prolonged walking and getting up from a sitting position. Dr. Lakin related that appellant last saw Dr. Wong approximately three to four months ago and that she was not presently under the care of any physician. On examination he found well-healed arthroscopic portals anteroinferiorly and anteromedially. Dr. Lakin noted that there was no joint line tenderness medially or laterally and no patellofemoral crepitus or compression. He noted that quadriceps and hamstring strength was 5/5. Dr. Lakin opined that the work incident did not aggravate appellant's preexisting left knee chondromalacia of the patellofemoral joint and trochlear groove. He noted that the left knee, including the patellofemoral joint was unremarkable currently, and unremarkable at the time of his original May 23, 2012 examination. Dr. Lakin advised that it is well known in orthopedic literature that osteochondral changes can be present radiographically, yet many of these lesions are asymptomatic. He noted that appellant had no clinical symptomology of the left knee patellofemoral joint and, therefore, there was no aggravation by the employment incident. Dr. Lakin advised that there was no reason why appellant could not return to work full time.

By decision dated November 20, 2013, OWCP denied appellant's claim for aggravation or precipitation of chondromalacia of the trochlear groove.

By letter dated December 20, 2013, appellant, through counsel, requested an oral telephone hearing.

At the June 23, 2014 hearing, counsel argued that there was a conflict in the medical evidence. He argued that, while Dr. Lakin found that there were no objective findings on examination, Dr. Wong offered objective findings including crepitus.

By decision dated August 5, 2014, an OWCP hearing representative affirmed the November 20, 2013 decision, finding that appellant did not establish that the accepted work incident aggravated her preexisting chondromalacia.

On appeal counsel maintains that there is an unresolved conflict in the medical record.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

³ Appellant did not appeal the affirmance aspect of this decision.

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

OWCP accepted appellant's claim for left knee tear of the medial meniscus. On January 28, 2013 appellant's compensation benefits were terminated based on the opinion of Dr. Lakin, who opined that appellant no longer had residuals of the accepted condition. On July 31, 2013, OWCP hearing representative affirmed the January 28, 2013 termination but found that the medical evidence needed further development with regard to whether appellant's preexisting chondromalacia was accelerated by the work injury.

In his February 12, 2013 report, Dr. Wong acknowledged that appellant's chondromalacia may have been present before the work injury, but advised that she had no symptoms of pain or discomfort prior to the injury. He opined that the work-related injury caused appellant to have a permanent injury to the medial meniscus of the knee and exacerbated the chondromalacia of the joint and trochlear groove. Dr. Wong further opined that appellant would always have residual pain and discomfort of the medial joint as well as to the patellofemoral joint. The Board finds that, although he opined that the work-related injury exacerbated appellant's chondromalacia, Dr. Wong failed to provide sufficient medical rationale supporting his opinion. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.⁸ This report is of diminished probative value because it fails to explain how the accepted left knee tear of the medial meniscus accelerated appellant's preexisting chondromalacia. The need for medical reasoning is particularly important in view of Dr. Wong's October 11, 2012 report in which he opined that he did not believe chondromalacia to be the cause of appellant's pain which he attributed to quad weakness. Other reports from Dr. Wong are also insufficient to discharge appellant's burden of proof as they do not offer a specific opinion on causal relationship between the diagnosed condition and the work-related injury.

⁵ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

In his September 9, 2013 report, Dr. Lakin noted that appellant complained of left knee pain worsened by prolonged walking and getting up from a sitting position. He opined that the work incident did not aggravate appellant's preexisting left knee chondromalacia of the patellofemoral joint and trochlear groove. Dr. Lakin noted that the left knee, including the patellofemoral joint was unremarkable currently and unremarkable at the time of his original May 23, 2012 examination. He advised that it is well known that osteochondral changes can be present radiographically and yet many of these lesions are asymptomatic. Dr. Lakin noted that appellant had no clinical symptomology of the left knee patellofemoral joint on his examinations and, therefore, there was no aggravation by the employment incident. He found no basis on which to support that appellant's chondromalacia was aggravated by the May 24, 2011 work injury. The Board also notes that initial medical reports, including those from Dr. Wong in 2011, do not indicate that appellant had chondromalacia which was aggravated by the May 24, 2011 work injury.

Consequently, the weight of the medical evidence does not establish that appellant's chondromalacia was aggravated by the May 24, 2011 work injury.

On appeal, counsel asserts that there is an unresolved conflict in the medical evidence under 5 U.S.C. § 8123(a). However, a conflict only occurs when there are two reports of virtually equal weight and rationale that reach opposing conclusions.⁹ Here, Dr. Wong's reports are of diminished probative value for the reasons previously provided. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁰ The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated the condition.¹¹ Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the May 24, 2011 work injury accelerated or contributed to her preexisting chondromalacia.

⁹ See *James P. Roberts*, 31 ECAB 1010 (1980). See *John D. Jackson*, 55 ECAB 465 (2004) (a simple disagreement between two physicians does not, of itself, establish a conflict; to constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale).

¹⁰ See *supra* note 5.

¹¹ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). See also *S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board